

COMMISSION ON STATE MANDATES

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August 9, 2000

Mr. Keith Petersen
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Paige Vorhies
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 501
Sacramento, Ca 95816

RE: **Staff Analysis**

Collective Bargaining

Incorrect Reduction Claim of:
West Valley-Mission Community College District
Statutes 1975, Chapter 961
CSM 99-4425-I-04

Dear Mr. Petersen and Mr. Vorhies:

The analysis of this incorrect reduction claim (IRC) is enclosed. The IRC is tentatively set for hearing on October 26, 2000 at the State Capitol, Sacramento, California. Comments on the analysis may be submitted in writing as provided in the Commission's regulations (CCR, Tit. 2, § 1182.2).

A pre-hearing conference is set for 8:30 a.m. on Friday, August 25, 2000 at the Commission's office located at 980 Ninth Street, Suite 300 in Sacramento.

Please call Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,

SHIRLEY OPIE
Assistant Executive Director
Commission on State Mandates

Encl.: Analysis
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Hearing Date: October 26, 2000
File Number: f:\mandates\irc\99-4425-04\dsa
Document Date: August 9, 2000

ITEM _____

Staff Analysis INCORRECT REDUCTION CLAIM

Statutes of 1975, Chapter 961
West Valley-Mission Community College District

Fiscal Year 1995-96

Collective Bargaining

Executive Summary

Background

Existing law requires the Commission on State Mandates (Commission) to hear and decide a claim that the State Controller's Office (SCO) has incorrectly reduced payments to local agencies or school districts. If the Commission determines that a reimbursement claim was incorrectly reduced, the Commission's regulations require the Commission to send its Statement of Decision to the SCO and request that the costs in the claim that were incorrectly reduced be reinstated.

This Incorrect Reduction Claim (IRC) was filed on the Collective Bargaining program. The West Valley-Mission Community College District (Claimant) contends that the SCO incorrectly reduced its reimbursement claims by disallowing the cost for conducting a reclassification study of salaries.

The Collective Bargaining Program

In 1975, legislation was enacted requiring public school employers to meet and negotiate with their employees regarding wages, hours of employment and other terms of employment. In 1978, the Board of Control, the Commission's predecessor, determined that this legislation constituted a reimbursable state mandated program, and adopted Parameters and Guidelines for this mandate. Following issuance of the SCO's claiming instructions, the Claimant submitted a reimbursement claim for fiscal year 1995-96, including a claim for the cost of conducting a reclassification study of salaries. The SCO denied reimbursement for the cost of conducting this study. The Claimant contends that the SCO incorrectly reduced the reimbursement claim.

Staff Analysis

Claimants' Position

The Claimant contends the reimbursement claim was incorrectly reduced because the SCO rejected the cost for conducting a reclassification study. This activity was properly claimed because it was included in the Parameters and Guidelines, is a proper subject of the collective bargaining negotiation process, and is within the scope of issues that may be discussed

during collective bargaining. The Claimant questions the SCO's argument that the Claimant provided insufficient documentation. The Claimant states that if the SCO determined that the contracted study was ineligible for reimbursement without that additional information, then the SCO's determination is arbitrary. In addition, the Claimant contends the SCO did not properly exercise its authority when it reduced the claim because it did not audit the claim. Finally, the Claimant argues that existing law requires the SCO to audit records of Claimants within two years. It is Claimant's position that since the SCO did not conduct an audit, the statute of limitations on the reimbursement claim expired.

State Controller's Office Position

The SCO contends that since the district and the union reached an agreement that classification studies would be conducted as part of the contract, the study was a post-contract activity, and is therefore ineligible for reimbursement. In addition, the SCO agrees that it is required to conduct audits of claims for reimbursement. The SCO states that it performed a desk audit of the claim which was properly conducted under the authority of law. Finally, the SCO argues that the Claimant failed to provide adequate documentation to justify its claim.

These issues are addressed below.

Issue 1:

Did the SCO have a legal basis for its actions, and if so, was the SCO's authority properly exercised?

The Claimant asserts that the SCO is required by law to audit claims prior to paying or reducing the claims, and since the SCO did not audit the Claimant's claim, its reduction of the claim was improper. The Claimant also contends that because the SCO did not conduct the audit, the SCO must show its legal basis for reducing the claim.

The SCO states that it conducted a "desk audit" prior to reducing the claim. The SCO explains that it was during this desk audit that it considered whether payment for an employee reclassification study was authorized by statute or the Parameters and Guidelines.

Staff agrees that the SCO is required to conduct audits of claims prior to paying them. As stated by the SCO, it conducted a desk audit of this claim. Staff finds there is nothing in statute or legal opinion that defines the scope of the SCO's audit or the manner in which the audit may be conducted. Accordingly, staff concludes that the allegations that the SCO did not perform a proper audit are unsubstantiated. However, this conclusion does not prevent the Commission from considering, pursuant to subdivision (b) of Government Code section 17551, whether the SCO incorrectly reduced the Claimant's claim for reimbursement.

Issue 2:

Did the SCO exceed the statute of limitations for reimbursing the claim?

The Claimant contends that the SCO did not conduct an audit, and thus, the two-year statute of limitations imposed upon the SCO to complete the audit has expired. Therefore, the reduced amount of the claim should be restored.

Staff finds the plain language of statute and case law are clear that the final determination regarding the amount of reimbursement does not have to be made within the two-year limit. Therefore, staff finds that because the SCO *commenced* its desk audit within the two-year period, it has not exceeded the statute of limitations.

Issue 3:

Are the costs for the reclassification study eligible for reimbursement as a “pre-contract” activity?

The Claimant states that reclassification studies are within the issues that may be negotiated under collective bargaining, and thus, are eligible for reimbursement.

The SCO maintains that the contract signed by the union and the Claimant included an agreement that the reclassification study would be completed, therefore, the study arose from the contract, and is ineligible for reimbursement. The SCO reasons that to accept Claimant’s position that costs for the reclassification study are reimbursable would mean that *any* contract provision regarding wages and other conditions of employment would also be reimbursable.

Staff finds that if a reclassification study is conducted *as part of the negotiations process and is necessary to finalize the contract*, the study would constitute a pre-contract activity, and would be reimbursable. However, in this case, the reclassification study was performed for Bargaining Unit Reclassification through June 30, 1996. In other words, the study was used as the means to reclassify salaries during the 1992-1996 contract period. Moreover, performance of the study was required by the collective bargaining agreement, not by the Rodda Act. Therefore, staff finds that inclusion of the process in the agreement was discretionary.

Alternatively, if the Commission agrees with Claimant and if no salary adjustments were made during the 1992-1996 period, the Commission could find that the study was performed to prepare for negotiations on the 1996-2000 contract.

Issue 4:

Was the SCO’s reduction of the claim arbitrary and without basis in fact?

The SCO states that the Claimant failed to identify a myriad of factors in its claim to justify the costs for contracted services to substantiate the claim. The Claimant rebuts that the SCO never requested the Claimant to provide this information prior to reducing the claim. The Claimant questions how the SCO could determine that the contracted services costs were ineligible for reimbursement if this additional information was necessary to make a determination. Therefore, the Claimant asserts that the SCO’s actions were arbitrary and have no basis in fact.

Despite the SCO’s and Claimant’s arguments regarding documentation, staff finds the record includes a district contract that indicates the study was a post-contract activity. As stated in the analysis of Issue 3, matters that arise from the contract are not reimbursable. Therefore, staff finds that SCO’s reduction was based on the record provided by the Claimant and, thus, was not arbitrary.

Conclusion and Staff Recommendation

Option 1

Based on the foregoing analysis, staff finds that the SCO did not incorrectly reduce the reimbursement claims because:

- The SCO is required, both under the Constitution and statute to conduct audits of claims prior to paying them. The SCO states that following these constitutional and statutory requirements, it conducted a desk audit of the claim. Therefore, the SCO has shown a legal basis for its reduction of the claim. Since an audit was conducted, the SCO's authority was properly exercised.
- The plain language of statute and case law are clear that the SCO must *commence* rather than *complete* its audit within the two-year statute after receipt of a reimbursement claim for reimbursement. Therefore, the SCO did not exceed the statute of limitations for reimbursing the claim.
- The reclassification study was performed for Bargaining Unit Reclassification through June 30, 1996. In other words, the study was used as the means to reclassify salaries during the 1992-1996 contract period. Moreover, performance of the study was required by the collective bargaining agreement, not by the Rodda Act. Thus, inclusion of the process in the agreement was discretionary.
- The action by the SCO to reduce this claim is not arbitrary. The SCO based its decision on a desk audit and on the documentation provided by the Claimant. The SCO correctly determined that costs for the reclassification study were not eligible for reimbursement.

Option 2

Alternatively, if the Commission agrees with Claimant, and if no adjustments were made during the 1992-1996 period, the Commission could find that the reclassification study was performed to prepare for negotiations during the 1996-2000 contract period. If the Commission makes this finding, then the Commission would find that the reimbursement claim was incorrectly reduced. Section 1185.1 of the Commission's regulations requires the Commission to send the Statement of Decision to the SCO and request that the costs in the claim be reinstated.

Staff recommends that the Commission adopt Option 1 to deny this IRC.

Chronology

10-22-80	Parameters and Guidelines adopted by Board of Control
7-22-93	Parameters and Guidelines amended by Commission
10-96	State Controller's Office issued Revised Claiming Instructions
11-26-96	West Valley-Mission Community College District (Claimant) filed reimbursement claims
6-18-98	State Controller's Office notified Claimant of reduction in claim
7-14-98	Claimant requested State Controller's Office to explain reduction
7-22-99	Claimant filed Incorrect Reduction Claim (IRC)
8-27-99	Department of Finance submitted comments on IRC
11-8-99	State Controller's Office submitted comments on IRC
12-15-99	Claimant submitted rebuttal comments
	Draft Staff Analysis issued

Background

Government Code 17561, subdivision (b), authorizes the SCO to audit the claims filed by local agencies and school districts and to reduce any claim that the SCO determines is excessive or unreasonable.

Government Code section 17551, subdivision (b), requires the Commission to hear and decide a claim that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district. That section states the following:

“(b) The Commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (b) of Section 17561.”

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.1 of the Commission's regulations require the Commission to send its Statement of Decision to the SCO and request that the costs in the claim that were incorrectly reduced be reinstated.

The West Valley-Mission Community College District (Claimant) filed an Incorrect Reduction Claim (IRC) on the Collective Bargaining program for the 1995-96 fiscal year in the amount of \$31,236.

The Collective Bargaining Program

The Legislature enacted the Rodda Act in 1975¹ requiring public school employers to meet and negotiate with their employees on matters of wages, hours of employment, and other terms of employment. The Rodda Act also created the Public Employment Relations Board (PERB) to adjudicate disputes between public employers and their employees.

¹ Statutes of 1975, Chapter 961.

In 1978, the Commission's predecessor, the Board of Control, determined that the Test Claim legislation (Rodda Act) constituted a reimbursable state mandated program.

Section G1-G6 of the 1993 Parameters and Guidelines,² lists the reimbursable activities under the Rodda Act, including:

- Representation of the public school employer at PERB hearings to determine bargaining units and the exclusive representative.
- Participation of the employer in the negotiations process; impasse proceedings, such as mediation and arbitration; disputes adjudicated by PERB; and appeal of PERB decisions.
- Participation in a fact-finding panel, including special costs incurred for the development of unique data required by the panel, and publication of the results of fact-finding.

The Parameters and Guidelines allowed costs for hiring outside contractors to complete the negotiation process, including contracted costs for:

- Participation in negotiations and the negotiation planning process.
- Impasse proceedings, such as mediation and arbitration sessions.
- Adjudication of contract disputes.

The SCO issued the claiming instructions for this mandate, which included reimbursement for contracted services for representation and participation in the above activities. The Claiming Instructions provided that contracting costs are reimbursable to the extent that they are justified and that the function to be performed requires special skill or knowledge not readily available from the Claimant's staff, or the service is cost effective.³

The Claimant contracted with Marlys Grodt & Associates to conduct a reclassification study of all office and technical positions. The Claimant submitted a reimbursement claim for collective bargaining costs incurred in fiscal year 1995-96, including the contracted costs for the reclassification study. The SCO denied reimbursement for the reclassification study because the costs were not mandated by the state. The Claimant contends that the SCO incorrectly reduced the reimbursement claim.

STAFF ANALYSIS

Claimant's Position

The Claimant contends the reimbursement claim was incorrectly reduced because:

- Government Code section 17558.5 requires the SCO to audit records of Claimants within two years. Since no audit was conducted by the SCO, the statute of limitations on the reimbursement claim expired.
- Since the SCO indicated that the Claimant failed to identify a myriad of factors in its claim to justify the costs for contracted services, the Claimant questions how the SCO could determine that the contracted services costs were ineligible for reimbursement if this additional information was necessary to make a determination. The Claimant asserts that the SCO's actions were arbitrary and have no basis in law.

² The Parameters and Guidelines relevant at the time the Claimant filed its 1995-96 claims.

³ Exhibit A, IRC, (Claiming Instructions), at Bates page ____.

- The SCO enforced the claim reductions without benefit of statute or regulation, and therefore, has the burden of proof to show a legal basis for the reduction of the claim.⁴
- The Claimant hired a consultant as part of collective bargaining negotiations. These activities were properly claimed because they were included in the Parameters and Guidelines. The Test Claim legislation states that:

“‘meeting and negotiating’ means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties . . .”⁵

Since the reclassification study is a proper subject of negotiations and within the scope of representation, the Claimant’s time and costs to negotiate the study and its results are reimbursable. The Claimant cites *CSEA v. Butte Community College District*, where PERB held that reclassification studies are within the scope of representation.⁶

- The SCO did not properly exercise its authority when it reduced the claim. Government Code section 17561(d) requires the SCO to audit and pay claims. The SCO reduced the claim without conducting an audit to verify costs prior to determining that costs were unreasonable or excessive.⁷

State Controller’s Office Position

The SCO maintains that the Claimant is not entitled to reimbursement for the contracted costs for the reclassification study, based on the following:⁸

- The SCO has constitutional authority to audit all disbursements from the state Treasury, including review of the reasonableness of such disbursements.⁹ In addition, Government Code section 17561 provides the SCO with the authority to reduce claims that the SCO finds excessive or unreasonable. Therefore, in the process of conducting a desk audit of the Claimant’s claim, the SCO considered whether payment for an employee reclassification study was authorized by statute or the Parameters and Guidelines.
- The Parameters and Guidelines state that contract services will be reimbursed for the negotiations process. While contracted services are reimbursable, they must be the types that are identified in each related section. The SCO found that there is no specific language in either the statute or the Parameters and Guidelines that allows reimbursement for a reclassification study.
- The SCO’s review of the Claimant’s supporting documentation shows that the reclassification study was a result of the collective bargaining negotiations.¹⁰

⁴ Exhibit A, IRC at Bates page 00.

⁵ Government Code section 3540.1, subdivision (h).

⁶ Exhibit D, Claimant’s rebuttal letter dated December 15, 1999.

⁷ Exhibit A, IRC, at Bates page 00.

⁸ Exhibit B, Comments submitted by the SCO, dated November 8, 1999.

⁹ 71 Ops.Cal.Atty.Gen. 275.

¹⁰ See Exhibit A of the SCO’s comments, at Bates page ____.

Documents show that the district and the union reached an agreement that classification studies would be conducted over a period of years.¹¹ Thus, in accordance with the agreement, the Claimant hired the consultant to conduct the reclassification study.

- The Claimant failed to specify the sections of the Parameters and Guidelines under which the contracted services were utilized, and failed to provide information such as (1) during what stage of the negotiation process the reclassification study was considered; (2) by which parties; and (3) how the information gathered from the consultant would be discussed or implemented.
- The reclassification study was a result of the negotiated contract, and related costs cannot be attached to the mandate issue of the process of negotiating a contract.

Department of Finance's Position

The Department of Finance (DOF) stated that it is not directly involved with the process and/or payment of reimbursement claims filed with the SCO, and therefore, it takes no position on this IRC.¹²

These issues are addressed below.

Issue 1:

Did the SCO have a legal basis for its actions, and if so, was the SCO's authority properly exercised?

The Claimant asserts that the SCO is required by law to audit claims prior to paying or reducing the claims, and since the SCO did not audit the Claimant's claim, its reduction of the claim was improper. The Claimant also contends that because the SCO did not conduct the audit, the SCO must show its legal basis for reducing the claim.

Citing statute and a 1988 Attorney General's Opinion as its legal authority,¹³ the SCO maintains that it has the constitutional authority to audit all disbursements from the State Treasury. The SCO asserts that it conducted a "desk audit" prior to reducing the claim. The SCO explains that it was during this desk audit that it considered whether payment for an employee reclassification study was authorized by statute or the Parameters and Guidelines.

Staff agrees that the SCO is required to conduct audits of claims prior to paying them.¹⁴ Existing law defines an audit as the examination of a claim or expenditure to determine whether the claim is correct and proper.¹⁵ The extent of any audit depends upon the individual circumstances as well as legal requirements and applicable professional standards.¹⁶ The SCO states that it conducted a desk audit of the claim. There is nothing in this section nor in the Attorney General's Opinion that defines the scope of the SCO's audit or the manner in which the audit may be conducted.

¹¹ See Exhibits B and C of the SCO's comments, at Bates page ____.

¹² Exhibit C, DOF letter dated August 27, 1999.

¹³ 71 Ops.Cal.Atty.Gen. 275.

¹⁴ Government Code section 925.6, subdivision (a), provides: "The Controller shall not draw his or her warrant for any claim until it has been audited by him or her in conformity with law and the general rules and regulations adopted by the board, governing the presentation and audit of claims. Whenever the Controller is directed by law to draw his or her warrant for any purpose, the direction is subject to this section."

¹⁵ Government Code section 925.6.

¹⁶ 71 Ops.Cal.Atty.Gen. 275, at p. 276.

Accordingly, staff concludes that the allegations that the SCO did not perform a proper audit are not substantiated. However, this conclusion does not prevent the Commission from considering, pursuant to subdivision (b) of Government Code section 17551, whether the SCO incorrectly reduced the Claimant's reimbursement claim.

Issue 2:

Did the SCO exceed the statute of limitations for reimbursing the claim?

The Claimant contends that the SCO did not conduct an audit, the statute of limitations imposed upon the SCO to complete the audit has expired, and therefore, the reduced amount of the claim should be restored. Under Government Code section 17558.5, the SCO has two years after the end of the calendar year in which the claim was filed to conduct an audit. Section 17558.5 states:

- “(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.
- (b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advise of any adjustment to a claim for reimbursement that results from an audit or review.
- (c) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.
- (d) This section shall become operative on July 1, 1996.”

There is currently a dispute between claimants and the SCO regarding the two-year period to conduct audits. Local agencies and school districts contend that the SCO must *complete* the audit within the two-year time frame. The SCO maintains that it must *commence* the audit within the two-year time frame.

The California Supreme Court recently analyzed a similar reimbursement statute for Medi-Cal claims in *Robert F. Kennedy Medical Center v. Belshe*.¹⁷ The court found the audit period established by the statute does not require that the final determination of the state's reimbursement liability be made within the statutory time period. Based on the plain language of the statute and case law, staff finds that the final determination regarding the amount of reimbursement does not have to be made within the two-year limit. Therefore, staff concludes that the SCO has not exceeded the statute of limitations for reimbursing the claim.

Issue 3:

Are the costs for the reclassification study eligible for reimbursement as a “pre-contract” activity?

¹⁷ (1996) 13 Cal.4th 748. See Exhibit E.

The Rodda Act requires public school employers to meet and negotiate in good faith with employees regarding matters within the scope of representation. The Rodda Act defines “scope of representation” as matters relating to wages, hours of employment, and other terms and conditions of employment. The Claimant states that reclassification studies are within the scope of representation, and cites a PERB decision¹⁸ determining that classification studies are within this scope. Therefore, Claimant concludes, regardless of whether reclassification studies are specifically included in the Parameters and Guidelines, such studies address matters of wages and conditions of employment, and are a proper subject of negotiation, and thus, are eligible for reimbursement.

The SCO argues that only costs incurred during the process of negotiating the contract are reimbursable. The SCO maintains that the contract signed by the union and the Claimant included an agreement that the reclassification study would be completed over a period of several years. The SCO notes that the district contracted with Marlys Grodt & Associates to conduct the reclassification study *after* the agreement was negotiated. Thus, the SCO maintains that the reclassification study constituted a post-contract activity. The SCO reasons that to accept Claimant’s rationale would mean that *any* provision regarding wages and conditions of employment would be reimbursable.

The Claimant explains that negotiation for a reclassification study is comparable to negotiation of pay increases. The Claimant acknowledges that the negotiation of a pay increase is a pre-contract activity and is reimbursable while the cost of implementing those pay increases is a part of the actual contract and is not reimbursable. However, the Claimant contends that, in the case of reclassification studies, if a reclassification study is prepared for negotiations, either for current or future contract negotiations, such studies are required to complete the negotiation process and are reimbursable.¹⁹

If a reclassification study is conducted *as part of the negotiations process, and is necessary to finalize the next contract*, the study would constitute pre-contract activities, and would be reimbursable. However, in this case the reclassification study was performed for Bargaining Unit Reclassification through June 30, 1996. In other words, the study was used as the means to reclassify salaries during the 1992-1996 contract period. That contract establishes the following process for reclassifying the salaries of various positions:²⁰

- Both the union and district recognize that reclassification and realignment (appropriate salary for appropriate position) are important, and that no comprehensive study has been conducted since 1985.
- Over the next four years, ending June 30, 1996, all classifications or job families in the District’s Basic Units shall be reviewed and studied to determine the appropriate classification, salary schedule, and general compensation considerations.
- A Reclassification Committee shall be formed, consisting of two members of the Basic Units (chosen by the union); a union field representative; two district representatives (chosen by the Director of Human Resources); and the Director of Human Resources.

¹⁸ *CSEA v. Butte Community College District* (1998) 23 PERC 30000.

¹⁹ Despite the SCO’s and Claimant’s arguments regarding documentation, the record includes a district contract that includes the study as a post-contract activity.

²⁰ Exhibit B, Attachments to SCO letter dated November 8, 1999.

- The Committee shall review and make recommendations regarding reclassification of jobs in the Basic Units to the school district board of trustees. The contract sets timelines for prioritizing which jobs will be studied first, and for completion of the review.
- The parties agree that these procedures shall be the exclusive procedures for Bargaining Unit reclassification through June 30, 1996.

The reclassification study was performed for Bargaining Unit Reclassification through June 30, 1996. Moreover, performance of the study was required by the collective bargaining agreement, not by the Rodda Act. Therefore, staff finds that inclusion of the process in the agreement was discretionary.

Alternatively, if the Commission agrees with Claimant, and if no adjustments were made during the 1992-1996 period, the Commission could find that the study was performed to prepare for negotiations on the 1996-2000 contract.

Issue 4:

Was the SCO's reduction of the claim arbitrary and without basis in fact?

The SCO states that the Claimant failed to identify a "myriad of factors" in its claim to justify the costs for contracted services, including (1) during what stage of the negotiation process the consultant services were considered; (2) by which parties; (3) how the information gathered from the consultant would be discussed or implemented; (4) and other factors that would substantiate the claim.²¹ The Claimant rebuts that the SCO never requested the Claimant to provide this information prior to reducing the claim. The Claimant questions how the SCO could determine that the contracted services costs were ineligible for reimbursement if this additional information was necessary to make a determination. Therefore, the Claimant asserts that the SCO's actions were arbitrary and have no basis in law.²²

The Parameters and Guidelines allow for reimbursement of contracted services for the collective bargaining negotiations process. The SCO's claiming instructions detail how to file claims for these costs, including a specification that contracted services must be justified by the Claimant. The SCO contends that the onus for providing sufficient documentation to ensure that claims are eligible for reimbursement is on the Claimant. It is not the responsibility of the SCO to seek additional information until the claim can be justified.

Despite the SCO's and Claimant's arguments regarding documentation, the record includes a district contract that includes the study as a post-contract activity. As stated in the analysis of Issue 3, costs that arise from the contract, itself, are not reimbursable. Therefore, staff finds that this SCO's reduction of Claimant's claim was based on the record provided by the Claimant and, thus, was not arbitrary.

Conclusion and Staff Recommendation

Option 1

Based on the foregoing analysis, staff finds that the SCO did not incorrectly reduce the reimbursement claims because:

²¹ Exhibit B, SCO comments, dated November 8, 1999, at Bates page ____.

²² Exhibit D, Claimant's rebuttal comments dated December 15, 1999, at Bates page ____.

- The SCO is required, both under the Constitution and statute to conduct audits of claims prior to paying them. The SCO states that following these constitutional and statutory requirements, it conducted a desk audit of the claim. Therefore, the SCO has shown a legal basis for its reduction of the claim. Since an audit was conducted, the SCO's authority was properly exercised.
- The plain language of statute and case law are clear that the SCO must *commence* rather than *complete* its audit within the two-year statute after receipt of a reimbursement claim for reimbursement. Therefore, the SCO did not exceed the statute of limitations for reimbursing the claim.
- The reclassification study was performed for Bargaining Unit Reclassification through June 30, 1996. In other words, the study was used as the means to reclassify salaries during the 1992-1996 contract period. Moreover, performance of the study was required by the collective bargaining agreement, not by the Rodda Act. Thus, inclusion of the process in the agreement was discretionary.
- The action by the SCO to reduce this claim is not arbitrary. The SCO based its decision on a desk audit and on the documentation provided by the Claimant. The SCO correctly determined that costs for the reclassification study were not eligible for reimbursement.

Option 2

Alternatively, if the Commission agrees with Claimant, and if no adjustments were made during the 1992-1996 period, the Commission could find that the reclassification study was performed to prepare for negotiations during the 1996-2000 contract period. If the Commission makes this finding, then the Commission would find that the reimbursement claim was incorrectly reduced. Section 1185.1 of the Commission's regulations requires the Commission to send the Statement of Decision to the SCO and request that the costs in the claim be reinstated.

Staff recommends that the Commission adopt Option 1 to deny this IRC.

[Back to "For Public Comment"](#)